



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sun Pipe Line Company
File: B-235893
Date: October 23, 1989

DIGEST

Protest that solicitation is defective because it did not contain agency statement of position in matter currently before the Energy Board of Contract Appeals concerning another, related contract is denied since the solicitation provided sufficient information to enable offerors to compete.

DECISION

Sun Pipe Line Company protests the terms of request for proposals (RFP) No. DE-RP96-89P015333, issued by the Department of Energy (DOE) for marine terminal distribution of DOE-owned crude oil from strategic petroleum reserve sites in Louisiana and Texas. The distribution services are required for periodic exercises and for drawdown in the event of an energy emergency. Sun essentially contends that the solicitation is ambiguous.

We deny the protest.

The solicitation was issued on May 10, 1989. The distribution services to be provided involve the pipeline transportation of up to 600,000 barrels per day of oil from DOE's pipeline connections at the reserve sites to ships at the contractor's docks. It also includes occasional temporary storage of the oil. The RFP requires the contractor to maintain the capability to handle the maximum oil distribution at all times. The contractor is to be paid a "stand-by charge" for maintaining the capability as well as oil movement and storage charges for any actual handling of the oil.

On December 2, 1977, DOE awarded contract No. DE-AC96-78P002837 to Sun. Under that contract Sun is to provide, through September 30, 1990, terminal distribution and

C-46841 / 139830

related services for up to 1.4 million barrels of crude oil per day at various DOE reserve sites. One of those sites is the West Hackberry, Louisiana Facility for which DOE has solicited distribution services under the protested RFP. On March 15, 1989, Sun filed a complaint before the Energy Board of Contract Appeals concerning its contract. In that complaint, Sun argues that it holds a requirements contract for these services and that DOE therefore, is obligated to use Sun's services for the actual distribution of the first 1.4 million barrels a day. DOE contends that the contract is an indefinite quantity contract and that while Sun must maintain the 1.4 million capability, DOE is not obligated to use that capability during any actual drawdown. The Energy Board has not yet issued a decision in the dispute.

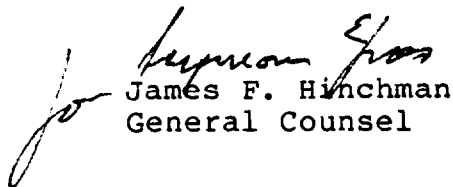
In its protest to our Office, Sun contends that the current solicitation is defective because it does not notify prospective offerors of DOE's position concerning the Sun contract. According to Sun, the defect makes the RFP ambiguous since as a potential offeror it does not know whether the requirement is for DOE's distribution needs in excess of the 1.4 million barrels or whether the solicitation was issued in breach of the alleged obligation.

After the protest was filed DOE issued amendment 004, which modified the RFP's general statement of work to provide that "[t]he marine terminal distribution capability required by this solicitation is in addition to any marine distribution capability provided under existing contracts to the Department of Energy" Sun contends that this modification compounds the ambiguity by disclosing the existence but not the nature of the risk to prospective offerors.

As an initial matter DOE asserts that we do not have jurisdiction over this protest because it involves the same issue currently before the Energy Board. DOE argues that the issue before both our Office and the Board is whether Sun has a requirements contract and therefore has exclusive rights to satisfy DOE's drawdown and distribution needs up to 1.4 million barrels per day. We disagree. The issue raised by the protester is whether the specifications in the current RFP are defective. To resolve this protest, we need not, and do not, decide whether the 1977 contract awarded to Sun is an indefinite quantity contract or a requirements contract. That is a decision properly for the Board, but is entirely separate from the question of whether the current RFP has appropriate specification provisions so as to permit full and open competition.

We find no ambiguity in the RFP. An ambiguity exists if solicitation provisions are subject to more than one reasonable interpretation. Collington Assocs., B-231788, Oct. 18, 1988, 88-2 CPD ¶ 363. DOE's statement in amendment 004 that the capability required is in addition to that provided under existing DOE contracts clearly informs Sun and the other offerors that they are to propose capability over and above that already under contract to DOE.^{1/} It should therefore be clear to Sun that DOE is now seeking capacity for 600,000 barrels per day in addition to the 1.4 million barrel capacity for which it currently has a contract. It is true that the amended RFP does not inform offerors of the risk that they might not be called on to actually perform and receive payment for the movement or storage of oil in the event the Energy Board finds that Sun has exclusive rights to provide the first 1.4 million barrels and the agency's needs do not exceed that amount. Nonetheless, the amended RFP does make it clear that what the agency seeks here is capacity in addition to that provided by existing contracts, and we see no reason why an offeror under this RFP, if it is interested in knowing what that contractual coverage is, simply could not make the appropriate inquiry. In our view, however, the RFP as amended provides sufficient information to place potential offerors on clear notice of what DOE is seeking. The procurement regulations require no more.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} In the conference held at our Office, the agency stated that the purpose of amendment 004 was to notify offerors that any capability they were proposing was capability in addition to what the offeror already had under contract to the DOE. The protester contends that this interpretation is inconsistent with the actual language of the modification. In its comments, the agency clarified its position that capability "in addition to any marine distribution capability provided under existing contracts to DOE" includes both what the offeror has under contract with the DOE as well as what other contractors may have. We find this interpretation consistent with the language of the amendment.